

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of the Notary Public
Commission of Ali Mohamoud Osman

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for hearing on June 11, 2007, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401. The OAH record closed at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce (the Department).

Ali Mohamoud Osman (Respondent) did not appear in person or by counsel.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

1. Respondent violated the standards of conduct for notarial acts and, as such, dishonestly and unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.085 (2006);
2. Respondent failed to record his signature with the Hennepin County District Court Administrator and, as such, unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.061; and
3. Respondent failed to notify the Secretary of State of any address change within 30 days of the change and, as such, unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.071.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 23, 2007, the Department sent by first class mail a copy of the Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges (Notice and Order for Hearing) to Respondent at the following addresses: (1) c/o Loring Park Chiropractic, PA, 9 West 14th Street, Minneapolis, MN 55403 (the address provided on his notary commission application); (2) c/o Loring Park Chiropractic, PA, 1501 LaSalle Avenue, Suite LL, Minneapolis, MN 55403 (Loring Park Chiropractic's current business address); and (3) 215 Kentucky Avenue South, Golden Valley, MN 55426 (the address listed on Respondent's driver's license).^[1]

2. The postal service returned all three mailings to the Department as being undeliverable.^[2]

3. The Notice and Order for Hearing scheduled a hearing in this matter at 9:30 a.m. on June 11, 2007, at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401.

4. The Notice and Order for Hearing provides that failure to appear at the hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including suspension, censure, or the imposition of civil penalties. In addition, upon a recommendation by the Commissioner, the Governor may remove Respondent from the office of notary public without further notice or hearing.^[3]

5. The Respondent did not appear for the hearing, nor did Respondent contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

6. Because Respondent failed to appear for the hearing, he is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 45.027, and 359.12.

2. The Department attempted to provide notice of the hearing to Respondent, but the Respondent failed to receive the Notice of Hearing because he failed to notify the Commissioner of his current address, as required by Minn. Stat. § 359.071. Based on the attempted service at all known addresses of the Respondent, this matter is properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of its failure to appear at the hearing.

6. Respondent violated the standards of conduct for notarial acts and, as such, dishonestly and unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.085 (2006).

7. Respondent failed to record his signature with the Hennepin County District Court Administrator and, as such, unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.061.

8. Respondent failed to notify the Secretary of State of any address change within 30 days of the change and, as such, unfaithfully discharged his duties as a notary public, in violation of Minn. Stat. § 359.071.

9. Every notary who dishonestly or unfaithfully discharges duties as notary is subject to the penalties imposed pursuant to section 45.027, except that a notary may be removed from office only by the governor or district court.^[4]

10. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the Respondent.

Dated: June 19, 2007.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, Attn: Sue Jensen, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

^[1] Affidavit of Service by First Class Mail (May 23, 2007).

^[2] Notice and Order for Hearing at 3.

^[3] Notice and Order for Hearing at 4.

^[4] Minn. Stat. § 359.12.